The Planning Inspectorate

Appeal Decision

Site visit made on 8 May 2019

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2019

Appeal Ref: APP/G2713/W/19/3223147
131 Long Street, Thirsk, YO7 1BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Mark McCalmont against the decision of Hambleton District Council.
- The application Ref 18/01409/FUL, dated 7 March 2018, was refused by notice dated 26 September 2018.
- The development proposed is the erection of 4 dwellings.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 4 dwellings at 131 Long Street, Thirsk, YO7 1BB in accordance with the terms of the application, Ref 18/01409/FUL, dated 7 March 2018, subject to the conditions in the attached schedule.

Main Issues

2. The main issues in this appeal are:

   - the effect of the development on the living conditions of adjoining occupiers with particular regard to noise and disturbance; and
   - the effect of the development on pedestrian safety, with particular regard to the increased use of the existing vehicular access.

Reasons

Living conditions

3. Access to the proposed development would be located between the two dwellings known as 131 and 135 Long Street. This is an existing vehicular access drive, measuring approximately 6 metres wide, which serves the appeal site and the existing parking spaces to the rear of 135 Long Street. It is currently gated and surfaced with loose stones and gravel.

4. There are no openings in the side elevation of the dwelling at 131 Long Street, which directly abuts the access drive. The rear garden to this property is bound by a 2 metre high brick wall. There are also no windows in the side elevation of 135 Long Street, which is separated from the driveway by a 1.6m high solid timber fence, located approximately 0.5m from the side of the dwelling. Other rear gardens adjoining the appeal site are bound by 1.8m high timber fencing and mature hedges.

5. A Noise Impact Assessment was submitted with the application. This measured noise from two positions within 135 Long Street, which is adjacent to the site access. It is reasonable to assume that the noise levels at other neighbouring properties would be comparable. During the monitoring period a single car passed over the access approximately 20 times. The findings confirm that the internal noise level of a passing car would be below the acceptable daytime level but slightly above the recommended night time level recommended by the British Standard BS 8233:2014 Guidance on sound insulation and noise reduction for buildings.

6. I am mindful of the fact that the access would serve four more dwellings than it does at present. However, given the scale of the development, it is unlikely that traffic movements will be heavy or frequent. Whilst I do not doubt that there will be instances where two cars will pass or a larger vehicle may need to access the site, in my view this is unlikely to be a regular occurrence and even more unlikely to occur during the night. I am also mindful of the fact that the noise assessment is based on a car travelling over a gravel surface. The existing gravel surface is proposed to be replaced with block paving. This smoother surface would reduce the noise from vehicles travelling over it.

7. I have had regard to the previous appeal decisions[1], which dismissed 3 dwellings and allowed 1 dwelling on the appeal site, with means of access through a narrow archway between 129 and 131 Long Street. The means of access proposed in the current appeal would in my view be a substantial improvement, being more than twice the width of the access beneath the archway in the second appeal. The new turning head arrangements also address the concerns raised in the first appeal regarding the effect upon occupants at 3 Bradbury Close.

8. I therefore conclude on this issue that the traffic movements resulting from the proposed development would not harm the living conditions of the adjoining occupiers. Consequently, I find no conflict with Policy CP1 of the Hambleton Local Development Framework (LDF) Core Strategy (CS) or Policy DP1 of the LDF Development Policies Document (DPD), which seek to protect the amenity of neighbours.

Pedestrian safety

9. The dwellings on either side of the access obscure visibility (for drivers of vehicles exiting the site), of the pavement directly in front of the adjacent dwellings, which is also used for parking. There is however a wider and better surfaced pavement, with street lighting, on the other side of the wide grass verge, adjacent to the road. Whilst this is signposted as a cycle path, which starts just south of the entrance to the proposed development, I noted on my site visit that it is also used by pedestrians, particularly as they approach or leave the pedestrian crossing. I have had regard to the views of the Council and local residents on this matter.

10. The vehicular access is existing, serving parking to the rear of 135 Long Street and having previously served a garage. I have not been provided with any evidence of any accidents or problems and I note that the Local Highway Authority have no objections to the increased use of this access subject to conditions.

[1] APP/G2713/W/16/3141641 and APP/G271/W/16/3158519

11. Plans have been submitted to show new pin kerbs and tactile paving has also been offered. These measures would clearly define the presence of the access for approaching pedestrians, who would then cross the access road as they do any other road.

12. Due to the width of the access, it would be more visible to pedestrians and would offer greater visibility to drivers exiting the site, than the access through the archway, which was considered in the previous two appeals.

13. Furthermore, the site is located close to the centre of Thirsk and within walking and cycling distance of, amongst other things, a primary school, local shops and an industrial park. As such future residents would not need to be heavily reliant upon cars for all of their journeys.

14. I therefore conclude that the proposed development would not harm pedestrian safety. Consequently, there would be no conflict with LDF Core Strategy Policy CP1 or Development Plan Policies DP3 and DP4, which seek to ensure safe access to development.

Other Matters

15. The new dwellings would be located within the Thirsk and Sowerby Conservation Area (CA). There is a statutory duty under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. I have been provided with a copy of the Thirsk and Sowerby Conservation Area Appraisal, which I have taken into account as a material consideration.

16. The Council's report on the application does not raise any concerns regarding the effect of the development upon the CA, subject to the use of appropriate materials, which can be controlled by conditions. I also note that previous applications and appeals have not been refused or dismissed on CA grounds.

17. The appeal site comprises an enclosed, long narrow strip of overgrown grassland, which slopes gently downhill to the west. Within the site there is a portable building and the remains of other single storey, semi derelict, structures that were used in connection with a former smallholding. The character and appearance of the site is distinctly different to that of the larger fields and meadows to the north and west of the site and to the wooded areas that run alongside Cod Beck.

18. The proposed dormer bungalows would extend no further west than existing built development to the south on Stammergate. Subject to the use of appropriate materials and to the retention of the mature hedgerow along the northern boundary, which provides a substantial level of screening from the adjacent open areas, it is my view that the small scale development proposed would preserve the character of the CA.

19. I have considered the concerns of local residents regarding the Council's Interim Housing Policy for villages, the site being partially outside of development limits, heritage impacts, access to adjacent properties, access width, ecology impacts, call for sites evidence, development of greenfield land, design quality and previous appeal decisions.

20. The suitability of the site for development, in terms of its location, greenfield nature, conservation or ecology impacts, is not disputed by the Council. I have noted local observations about Tawny Owls being present in the area however there is no evidence to suggest that the development of the appeal site would be harmful to this woodland species. I have given little weight to the call for sites evidence, which I agree is subject to change and is not policy.

21. The Highway Authority is satisfied with the width of the proposed access road and I have no reason to disagree with this view. It would be of sufficient width for the number of dwellings it would serve and would exceed 4.1 metres wide along the critical section in which vehicles are most likely to pass. I have given little weight to the North Yorkshire County Council Residential Highway Design Guide, which is informal guidance only and is somewhat out of date.

22. I acknowledge the potential for archaeological remains to exist within the site and have addressed this below in the conditions section. Whilst I have had regard to the previous appeal decisions relating to this site, those proposals both relied upon a different means of access and as such are not directly comparable.

Conditions

23. The Council has suggested a list of conditions to which the appellant has raised no objections. I have considered these against the advice set out in Planning Practice Guidance. The standard time limit and list of approved plans have been conditioned to provide certainty. In the interests of visual amenity, I have conditioned details relating to materials and boundary treatment. Due to the topography of the site a levels condition is also reasonable in the interests of visual and residential amenity.

24. Conditions in respect of parking and access are imposed in the interests of highway safety. However, a condition restricting the use of the archway access, which serves properties outside of the appellant's control, is not in my view reasonable or necessary. The development would be completed in accordance with the approved plans, which include improvements to the new access between 131 and 135 Long Street. Given that the new access is much more convenient and user friendly, I see no reason why residents of the new development would choose to use the narrow archway to enter or exit the site. Moreover there is no justification for restricting access through the archway for existing users. The introduction of such measures would be more likely to create rather than prevent highway safety issues. Details of a site compound and measures to prevent mud on the highway are also considered unnecessary for a development of this scale.

25. In the absence of any information regarding the historic land use of the site and its immediate surroundings, I have imposed a contaminated land condition as a precautionary measure.

26. Although not suggested by the Council, I have also imposed conditions recommended by Yorkshire Water, to ensure satisfactory drainage and a condition to retain and protect the northern boundary hedge, which makes a positive contribution to the appearance of the CA and to local wildlife habitat.

27. The site is located on the edge of the former medieval town of Thirsk, where archaeological remains may be present. The County Council Heritage Officer

recommended further investigations be undertaken prior to determination. However, the absence of this information was not a reason for refusal and no archaeological conditions have been suggested. I also note that the previous appeal decisions did not refer to or condition this matter although the previous Inspectors may not have been made aware of the archaeological potential of the site, which is not a matter that I can disregard. As such, given that the current proposal would involve far greater ground disturbance than the approved scheme, I have imposed a condition for a scheme of archaeological investigation to be undertaken prior to commencement of the development.

Conclusion

28. For the reasons given above, I conclude that the appeal should be allowed.

Rachael Bartlett

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: PP01, PP02A, PP03A and PP04A.

3) No above ground construction work shall be undertaken until details of the materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.

4) Above ground construction shall not be commenced until details relating to boundary walls, fences and other means of enclosure for all parts of the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

5) Prior to development commencing details of the existing ground levels of the site, the existing ground and floor levels of neighbouring buildings and the proposed ground and finished floor levels of the site shall be submitted to and approved in writing by the Local Planning Authority. The levels shall relate to an identified fixed Ordnance Datum. The development shall be constructed in accordance with the approved details.

6) There shall be no excavation or other groundworks, except for investigative works, or the depositing of material on the site until the access to the site has been set out and constructed in accordance with the published Specification of the Highway Authority and the following requirements:
   i) the crossing of the highway verge shall be improved by widening on the southern side to give a minimum width of 4.1 metres, and shall be constructed in accordance with Standard Detail number E6.
   ii) any gates or barriers shall not be able to swing over the existing or proposed highway.
   iii) the final surfacing of any private access shall not contain any loose material that is capable of being drawn on to the existing public highway.

iv) provision of tactile paving in accordance with the current Government guidance.

All works shall accord with the approved details unless otherwise agreed in writing by the Local Planning Authority.

7) No part of the development shall be brought into use until the approved vehicle access, parking, manoeuvring and turning areas have been constructed in accordance with the details on drawing no. PP02A. Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

8) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the Local Planning Authority.

9) The site shall be developed with separate systems of drainage for foul and surface water on and off site.

10) There shall be no piped discharge of surface water from the development prior to the completion of surface water drainage works, details of which shall be submitted to and approved by the Local Planning Authority. If discharge to a public sewer is proposed, the information shall include, but not be exclusive to:

i) evidence to demonstrate that surface water disposal via infiltration or watercourses are not reasonably practical;

ii) evidence of existing positive drainage to public sewer and the current points of connection; and

iii) the means of restricting the discharge to public sewer to the existing rate less a minimum 30% reduction, based on the existing peak discharge rate during a 1 in 1 year storm event, to allow for climate change.

11) No development shall take place until a Written Scheme of Investigation has been submitted to, and approved in writing, by the Local Planning Authority. The scheme, which shall be implemented in accordance with the approved details, shall include an assessment of significance and research questions; and:

i) the programme and methodology of site investigation and recording;

ii) the programme for post investigation assessment;

iii) the provision to be made for analysis of the site investigation and recording;

iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;

v) the provision to be made for archive deposition of the analysis and records of the site investigation; and

vi) the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

12) The hedgerow along the northern boundary of the site shall be protected throughout the construction phase, in accordance with a scheme that shall have first been submitted to and approved in writing by the local planning authority. This hedgerow shall thereafter be retained unless otherwise agreed in writing by the local planning authority. Should any part of the hedgerow be removed or become seriously damaged or diseased it shall be replaced in the next planting season with new hedge planting of similar size and species.